TOBACCO, ALTERNATIVE NICOTINE & VAPOR PRODUCT

ENFORCEMENT HANDBOOK

SCHEDULE 3 | FY21





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FY 2021

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Thank you for taking the I-PLEDGE and partnering with the Iowa Alcoholic Beverages Division (ABD) to help keep tobacco, alternative nicotine and vapor products out of the hands of underage persons in Iowa. This handbook is a valuable resource to assist in the successful completion of tobacco, alternative nicotine and vapor product enforcement initiatives. Relevant forms, sample letters and suggested procedures are contained in this publication. Feel free to make copies of these documents to complete necessary paperwork.

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I. Press Release



[POLICE DEPARTMENT/SHERIFF'S OFFICE] TO PARTNER WITH IOWA ALCOHOLIC BEVERAGES DIVISION FOR TOBACCO, ALTERNATIVE NICOTINE AND VAPOR PRODUCT EDUCATION AND ENFORCEMENT

[COMMUNITY], Iowa ([MONTH ##], 20##) – The [POLICE DEPT/SHERIFF'S OFFICE] has taken a pledge to keep tobacco, alternative nicotine and vapor products out of the hands of [COMMUNITY] underage persons.

Known as I-PLEDGE, the program is a partnership with the Iowa Alcoholic Beverages Division (ABD) to educate local retailers and to enforce Iowa's tobacco, alternative nicotine and vapor product laws. Since the program's inception in 2000, the statewide tobacco compliance rate has grown to 95%. By participating in the program, the [POLICE DEPT/SHERIFF'S OFFICE] has committed to do its part to increase the compliance rate even more this year.

I-PLEDGE places emphasis on retailer training. Clerks who successfully complete an online training course and then pass an exam will become I-PLEDGE certified. This allows a retail establishment to use an affirmative defense against a civil penalty if the certified clerk makes an illegal sale.

"I-PLEDGE's retailer training is a great way for clerks to prepare themselves to refuse illegal tobacco, alternative nicotine and vapor product sales," [CHIEF/SHERIFF NAME] said. "The training also assists retailers to ensure they maintain a compliant and responsible establishment."

[OFFICERS/DEPUTIES] will also be conducting compliance checks on local establishments as part of the I-PLEDGE program. Underage customers, under the supervision of law enforcement officials, will enter establishments and attempt to buy tobacco, alternative nicotine and vapor products. Clerks who make the illegal sale will be cited on the spot.

Criminal penalties for selling tobacco, alternative nicotine and vapor products to a underage purchaser include a \$100 fine for a first offense, a \$250 fine for a second offense and a \$500 fine for third and subsequent offenses. However, handing out citations is not the intent of the I-PLEDGE program.

"By partnering with the Iowa Alcoholic Beverages Division, we hope to educate clerks and maintain a compliant retail environment in our community," [CHIEF/SHERIFF] said. "Moreover, we pledge to help keep tobacco, alternative nicotine and vapor products out of the hands of underage persons in Iowa."

To take the I-PLEDGE training or search certification records go to https://abd.iowa.gov/.

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II. Officer Checklist

SCHEDULE 3 FY 2021



| 1. | Issue a press release indicating your agency is partnering with the lowa Alcoholic Beverages Division to conduct compliance checks. A suggested press release is included on page 2 of this handbook and can be downloaded at https://abd.iowa.gov/ . |
|-------------|--|
| > | Please do not provide retailers with advance notification of compliance checks. |
| 2. | Visit your city clerk or county auditor to obtain a current list of licensed tobacco, alternative nicotine and vapor product retailers in your area. |
| | ABD does not always receive the most current tobacco, alternative nicotine and vapor product permit information. Therefore, it is important that you receive a list from your city clerk or county auditor prior to conducting compliance checks. If you encounter discrepancies between your city clerk's/county auditor's list and ABD's online list, contact ABD using the contact information on page 13. You should also contact ABD if you know of, discover, or receive information regarding a retailer |
| | that is not on your city clerk's/county auditor's list or ABD's online list. |
| 3. | Complete and submit compliance checks on or before February 15, 2021. |
| • | Try to complete compliance checks on seasonal businesses before the end of the 2020 business season but not before October 1st. |
| > | Use only Fiscal Year 2021 Tobacco, Alternative Nicotine and Vapor Product Enforcement Program forms included in this handbook, or download current forms at https://abd.iowa.gov/ . |
| 4. | Immediately issue a criminal citation to non-compliant clerks. Your agency should notify the city or county attorney within 72 hours for criminal proceedings. Your agency should also notify the business owner or manager of the tobacco/alternative nicoitne/vapor product violation within seven (7) business days. |
| • | Do not obtain the name of the clerk for compliance checks resulting in compliance. ABD does not need this information and the clerk may notify other retailers in the area that compliance checks are being conducted. |
| 5. | Complete and submit a second compliance check on violators only by May 15, 2021. |
| | |

NOTE: Compliance checks <u>must</u> be conducted at establishments during regular business hours.

III. Compliance Check Results Unable to Complete



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Not all compliance checks may be classified as compliant or non-compliant. Below are a few circumstances law enforcement should be aware of to ensure accurate results are reported to ABD:

- ▶ Establishment tells youth that the business no longer sells tobacco, alternative nicotine or vapor products: The officer should contact the city clerk/county auditor to determine if the business no longer holds a valid permit or if the business simply told the underage purchaser that the business no longer sells tobacco, alternative nicotine or vapor products. If the business does have a valid permit, enter the compliance check as "compliant." If the business no longer holds a valid permit, see payment schedule below.
- ▶ Establishment no longer holds a valid permit: Submit the compliance check as "no longer holds a valid tobacco, alternative nicotine, or vapor product permit." Make sure a compliance check was attempted if this selection is chosen. If you are aware an establishment on ABD's list no longer holds a valid permit prior to attempting to conduct a compliance check at the establishment, contact ABD using the contact information on page 13.
- ▶ **Establishment is out of business**: Submit the compliance check as "out of business." Make sure a compliance check was attempted if this selection is chosen. If you are aware a business is no longer in operation prior to attempting to conduct a compliance check at the establishment, contact ABD using the contact information on page 13.
- ▶ Underage Purchaser is denied entry: Submit the compliance check as "compliant." These establishments are typically "members only" or the youth is stopped at the door due to age.
- ▶ Establishment is unsafe or inappropriate: Establishments that are unsafe or inappropriate for a underage purchaser to enter can be considered an "unsatisfactory condition." However, to formally designate the establishment as an "unsatisfactory condition," the officer must contact ABD prior to conducting the compliance check for confirmation. The officer must conduct a "walk-through" of the premises to ensure the establishment is in compliance with lowa's tobacco, alternative nicotine and vapor product laws.

PAYMENT SCHEDULE (indicates if a compliance check will result in payment)

NOTE: A "?" in the paid column means payment for the compliance check will depend on the reason given in the comments section of the report. If you question what reason to use or are unsure if your department will be paid for an inspection, contact ABD using the contact information on page 13.

| Reason | Paid Y/N | Reason | Paid Y/N |
|---|----------|---|----------|
| Out of business | N | Unsatisfactory Condition (explain in comments) | ? |
| Valid permit but no sale | Υ | In operation but closed at time of visit | N |
| Inaccessible by youth (explain in comments) | ? | Unsafe to access (explain in comments) | ? |
| Private club (explain in comments) | ? | Presence of law enforcement officials | N |
| Temporary business closure | N | Youth knows salesperson | N |
| Unable to locate business | N | Moved to new location but not inspected | N |
| Wholesale/Carton sale only | N | Drive-thru only but youth inspector has no DL | N |
| Broken vending machine | N | Tobacco/alternative nicotine/vapor product out of stock | N |
| Duplicate | N | Run out of time | N |
| No longer holds valid permit | N | Other non-completion (explain in comments) | ? |

IV. Website, User ID and Password



The I-PLEDGE Tobacco, Alternative Nicotine and Vapor Product Enforcement Program website allows law enforcement agencies to electronically file compliance check reports and submit results to ABD for payment online. Please follow the steps below to enter compliance check reports online.

- 1. Access the site by visiting https://abd.iowa.gov/;
- 2. Click on the "I-PLEDGE Training & Enforcement Log In" link located under the TOBACCO banner at the top of the home page;
- 3. Choose the "Tobacco, Alternative Nicotine and Vapor Product Enforcement Program." and enter a "User ID" and "Password."

USER ID:

If you are a **Police Department**, your User ID is the name of your city.

Example: If you are entering results for the Polk City Police Department, your User ID is Polk City (include space).

If you are a **Sheriff's Department**, <u>your User ID is the name of your county</u>, <u>plus the word "County"</u>. Example: If you are entering results for the Buena Vista County Sheriff's Department, your User ID is **Buena Vista County** (include spaces).

PASSWORD:

You will use the same password that you used during FY2020.

- Your password is case sensitive, meaning capital and small letters must be in appropriate places.
- Your password cannot contain symbols like &, *, or #, etc.
- DO NOT USE YOUR EMAIL ADDRESS AS A PASSWORD.

If you experience difficulty accessing the I-PLEDGE Tobacco, Alternative Nicotine and Vapor Product Enforcement Program website, make sure you are using **Internet Explorer** as your web browser. If you are using **Internet Explorer** and continue to experience difficulty, contact ABD using the contact information included on page 13.

V. Submitting Compliance Check Results

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Follow these easy steps to submit compliance reports online:

Login:

Login using your user ID and password. Please note both the user ID and password are case sensitive; *meaning capital and lowercase letters must be in appropriate places.*

Disclaimer:

A successful login will prompt a disclaimer screen. The disclaimer explains the terms of using the FPLEDGE Tobacco, Alternative Nicotine and Vapor Product Enforcement Program website. Agreeing to these terms allows you to enter the website and submit compliance reports for payment.

Locate Retailer:

A screen with a list of retailers will appear. You may sort each column by clicking on the column heading. After locating the appropriate retailer, click on that retailer's name and a screen with the retailer's information will appear. Note: An accurate list of retailers should be obtained from your city clerk or county auditor. Contact ABD if you find discrepancies between the online list and the list obtained from your city clerk or county auditor.

Enter Compliance Check Results:

After arriving at the retailer information screen, scroll to the bottom and click on "**Report Compliance.**" A screen will appear that will allow you to enter compliance check results. Please complete all applicable fields accurately. If you do not see the "Report Compliance" button or the button does not work, make sure you are using **Internet Explorer** as your web browser.

Submit Compliance Check Results:

After entering the results of the compliance check, click on "Submit" located at the bottom of the screen. Submitting the results is the same as an invoice, billing ABD \$75 per compliance check. Payment will depend on whether the compliance check is eligible for reimbursement. If an explanation is required, please ensure a complete and accurate explanation is provided in the comments section. It is imperative to enter compliance check reports accurately and in a timely manner. Please contact ABD if an error is made when entering a compliance check report. The contact information for ABD can be found on page 13.

Notifications to Retailers:

After receiving the compliance report, ABD will send a notification of compliance to retailers who do not sell tobacco, alternative nicotine or vapor products to underage persons and a notification of non-compliance to those who do sell. The notifications will be sent to retailers monthly. **It is imperative to enter compliance check reports accurately and in a timely manner.** Please contact ABD if an error is made when entering a compliance check report. The contact information for ABD can be found on page 13.

Questions or Problems?

If you have problems submitting a report or have questions regarding the website, contact ABD using the contact information on page 13.

VI. Compliance Check Procedures FY 2021



ABD has created the following suggested procedures for routine and fair monitoring of lowa retail establishments licensed to sell tobacco, alternative nicotine and vapor products.

Preparing for Compliance Checks

A law enforcement agency (department) should coordinate the participation of an underage purchaser to assist with the controlled-buy operation (compliance check).

- ▶ Underage Purchasers shall be 16, 17, 18, 19 or 20 years of age. Underage purchasers younger than the age of 16 shall not be used to conduct tobacco, alternative nicotine and vapor product compliance checks.
- ▶ All underage purchasers should be of good character.
- ▶ Underage purchasers should have the appearance, demeanor, mannerisms and appropriate dress for their age group. Underage purchasers should refrain from wearing high school or college logos while conducting compliance checks.
- ▶ All underage purchasers shall complete an Underage Purchaser Consent Form prior to the scheduled compliance check date. The form does not to be signed by the parent/guardian if the underage purchasers is 18 years of age or older. If the underage purchaser is younger than 18 years old, have the parent/guardian sign the consent form and provide a copy of the signed consent form to the parent/guardian.

In order to maintain the integrity of the program, the officer conducting compliance checks should wear plain clothes and utilize an unmarked vehicle whenever possible.

The officer should review the list of retail establishments and determine what tobacco/alternative nicotine/vapor products each retailer sells. Payment cannot be made and the department will be asked to repeat the compliance check if the underage purchaser asks for a product not sold by the retailer.

The citing law enforcement official shall be available for testimony at hearings and district court proceedings at the request of the local/state prosecutor and shall advise local/state prosecutors and ABD as to the disposition of criminal citations.

A Briefing Shall be Held Prior to Conducting Checks

- ▶ Appearance: The officer should approve the underage purchaser's appearance and a photo should be taken of the underage purchaser before each day of compliance checks. The underage purchaser's appearance should not be changed after that point.
- ▶ Official Identification: The officer should verify the underage purchaser has proper, official identification showing date of birth. This shall be the only identification carried or presented throughout the course of the compliance check. The official identification should be an lowa driver's license. Make a photocopy of the underage purchaser's ID.
- ▶ Possessions: The underage purchaser should only have buy money provided by the department in his/ her possession; no other money should be on his/her person. Check the underage purchaser and his/her possessions to ensure there are no tobacco, alternative nicotine or vapor products in his/her possession prior to the check.
- ▶ Instructions: The underage purchaser should be instructed:
 - » As to what product he/she should attempt to purchase;
 - » Go directly to the targeted merchandise to attempt to make the purchase;
 - » Speak only as necessary at no time should the underage purchaser try to persuade the licensee/clerk to complete the sale;
 - » If asked about age, the underage purchaser should truthfully respond with how old he/she is;
 - » If asked for ID, the underage purchaser should present his/her ID to the licensee/clerk;
 - » If the licensee/clerk takes a underage purchaser's ID, tell the underage purchaser not to argue but to leave the store and the officer will obtain the underage purchaser's ID and congratulate the licensee for compliance;
 - » If a receipt of the purchase is offered, accept and maintain for evidence;
- ► **Termination:** The officer shall have the authority to terminate the operation at any time for safety reasons.

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Law Enforcement Positioning

- ▶ Tobacco, Alternative Nicotine and Vapor Product Retailers: If possible, the officer should be stationed either inside the store or at a point from which the officer can observe the sale. The officer should not appear to be with the underage purchaser.
- ▶ Bars/Restaurants: The underage purchaser should enter the establishment first and request a tobacco, alternative nicotine or vapor product. If possible, the officer should enter the bar/restaurant after the underage purchaser and observe the purchase attempt from a discreet location. The officer should not appear to be accompanying the underage purchaser. Most bars/restaurants typically sell traditional tobacco products versus alternative nicotine and vapor products. An establishment where an employee checks the underage purchaser's ID at the door and denies the underage purchaser access to the premises shall be considered to be compliant.

Unsatisfactory Condition

Establishments that are unsafe or inappropriate for a underage purchaser to enter can be considered an "unsatisfactory condition." A underage purchaser should never be sent into an adult entertainment facility or bar where the officer feels it is unsafe or inappropriate for the underage purchaser. **The majority of bars in lowa do not fall under this condition.**

However, to formally designate the establishment as an "unsatisfactory condition," the officer must contact ABD prior to conducting the compliance check for confirmation. Once the establishment has been formally designated as an "unsatisfactory condition," the officer must conduct a "walk-through" of the premises to ensure the establishment is in compliance with lowa's tobacco, alternative nicotine and vapor product laws. A payment will not be sent to law enforcement agencies that neglect to conduct a "walk-through" of "unsatisfactory condition" establishments. In the event that ABD feels the check can safely be conducted, the department will be asked to complete the check.

Vending Machines

A vending machine which is accessible to an underage purchaser under age 21 is in violation of Iowa Code section 453A.36(6). If an establishment has a vending machine, the underage purchaser should be instructed to approach the retailer and specifically ask for change for the vending machine. If change is given, the underage purchaser should purchase tobacco, alternative nicotine or vapor products from the machine and exit. Asking specifically for change for the vending machine helps to identify who to cite during a non-compliant vending machine sale.

Audio/Video Recording

Audio and video equipment may be utilized during compliance checks in lieu of officer observation.

Criminal Citation

Immediately issue a criminal citation to an employee/clerk who sells a tobacco, alternative nicotine or vapor product to a underage purchaser, a violation of Iowa Code section 453A.2(1). A citation must be issued before your department may receive payment. Selling a tobacco, alternative nicotine or vapor product to a underage purchaser is a scheduled violation, resulting in scheduled fines as follows:

- ► 1st Offense: \$100.00 plus surcharge and court costs
- ▶ 2nd Offense: \$250.00 plus surcharge and court costs
- ➤ 3rd Offense: \$500.00 plus surcharge and court costs

Reporting

The department shall enter the compliance check results into the I-PLEDGE Tobacco, Alternative Nicotine and Vapor Product Enforcement Program accessible at https://abd.iowa.gov/. For further instruction on this procedure refer to pages 5 and 6. It is imperative to enter compliance check reports accurately and in a timely manner. Please contact ABD if an error is made when entering a compliance check report. The contact information for ABD can be found on page 13.

Additional Information

For further information on tobacco, alternative nicotine and vapor product laws refer to Iowa Code Chapter 453A. The Iowa Code can be viewed at www.legis.iowa.gov/.



VII. Underage Purchaser Consent Form FY 2021

| Underage Purchaser's Name: | | |
|--|---|--|
| Address: | | |
| City: | State: Zip: | |
| Home Phone Number: | Date of Birth: | |
| Social Security Number: | Gender: | |
| Underage Purchaser's Driver License | e or Identification Card No.: | |
| ► I understand my participation officer at all times. | n is voluntary and I will be under | the supervision of a law enforcement |
| ► I understand it is essential to effectiveness, accuracy and v | | of the program, therefore ensuring the |
| | on in the project can be termina the law enforcement agency. | ited at any time by myself, a parent/ |
| | obacco, alternative nicotine and | of tobacco, alternative nicotine and va- vapor products will be treated as evi- |
| ▶ I understand that I may be re | equired to enter bars. | |
| laws may receive citations that | | alternative nicotine and vapor product nsion or revocation of their license and |
| ▶ I understand the success of t | he project is not dependent upon | making successful, illegal purchases. |
| My signature on this document value and procedures outlined in the tra | | ate in the project and to follow the rules |
| Underage Purchaser Signature | 9 | Date |
| I have read the Program Proced my child to participate in this proj | | Guidelines and give my permission fo |
| Parent/Guardian Signature | | Date |
| Program Coordinator | | Date |

Note: Parent/Guardian signature is not required if underage purchaser is over the age of 18 years old.



VIII. Compliance Check Form FY 2021

| Retailer: | Address: | | | | |
|---|---------------------------------------|---|---|--|--|
| City: | | State: | ZIP: | | |
| RESULTS (check one): | Compliant | If Unable to Comp | elete the Compliance Check (check one) | | |
| | Non-Compliant | ☐ Establishment has a VALID PERMIT but Does Not Sell Tobacco, Alternative Nicotine or Vapor Products. | | | |
| | Jnable to Complete Not Applicable) | ☐ Establishment No Lo | fied by City Clerk or County Auditor onger Holds a Valid Tobacco, Alternative | | |
| Clerk Information: ☐ Male ☐ Female | | Nicotine or Vapor P ☐ Establishment is Out | | | |
| (NAME ONLY REQUIRED IF NON-COMPLIANT): | | | ignated as an "Unsatisfactory Condition" | | |
| First Name: Middle Initial: | | "Unsatisfactory Condition" verified by ABD Investigator Officer Conducted a Walk-Through of the Premises | | | |
| Last Name: Case #: | | ► If none of the above rea | ed in Comments Section Below) asons apply, write reason and explanation on | | |
| I have issued a criminal citation to the clerk listed above for selling tobacco, alternative nicotine or vapor products to a person under age eighteen. lowa Code § 453A.2(1). | | | | | |
| (NOTE: If the compliance check result is Non-Compliant, a citation must be issued before your department may receive payment.) | | | | | |
| OFFICER INFORMATION (OFFICER T | HAT CONDUCTED CO | MPLIANCE CHECK |): | | |
| First Name: | Middle Initial: | Last Name: | | | |
| Badge: Departs | ment: | | | | |
| CONFIDENTIAL INFORMANT (CI): | | | | | |
| Cl Age: □ 16 □ 17 □ 18 □ 19 □ 20 | | | | | |
| Cl Gender: ☐ Male ☐ Female Cl Number: ☐ (Last 4 digits of Cl's ID) | | | | | |
| Cl Race: ☐ Black ☐ American Indian/ Alaskar | n Native □ Asian/ Pacif | ïc Islander □ White | □ Unknown | | |
| Cl Ethnicity: ☐ Not of Hispanic Origin ☐ Hispanic Origin ☐ Unknown | | | | | |
| RESULTS OF ATTEMPTED PURCHA | ASE: | | | | |
| Attempted Purchase Item: □ Cigarettes □ | Smokeless Tobacco | ☐ Other Tobacco P | roduct | | |
| □ Vapor Product □ Alternative Nicotine Product | duct COMM | IENTS: | | | |
| Age Requested? □ YES □ NO | | | | | |
| ID Requested? ☐ YES ☐ NO | | | | | |
| | | | | | |
| | | | | | |
| Officer Signature | \$75 | | | | |

IX. Alternative Nicotine & Vapor Products

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What is an Alternative Nicotine and Vapor Product?

Vapor Product:

Any non-combustible product which may or may not contain nicotine, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from a solution or other substance. Vapor product includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any cartridge or other container of a solution or other substance, which may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include a product regulated as a drug or device by the United States Food and Drug Administration under chapter V of the federal Food, Drug and Cosmetic Act.

Alternative Nicotine Product:

A product, not consisting of or containing tobacco, that provides for the ingestion into the body of nicotine, whether by chewing, absorbing, dissolving, inhaling, snorting, or sniffing, or by any other means. Alternative nicotine products do not include cigarettes, tobacco products, or vapor products, or a product that is regulated as a drug or device by the United States Food and Drug Administration under chapter V of the federal Food, Drug and Cosmetic Act.

Based on advice from the lowa Attorney General's Office, the last line of the above definition *eliminates cessation products from being included under the law.* **Therefore, the purchase of cessation products should not be attempted during tobacco, alternative nicotine and vapor product compliance checks.** The three types of over the counter cessation products currently approved by the FDA are nicotine gum, transdermal patches, and nicotine lozenges.

Why are some of the retailers listed in the I-PLEDGE Tobacco, Alternative Nicotine and Vapor Product Enforcement Program website highlighted blue?

Retailers that indicated they were an alternative nicotine/vapor store on their permit applications are highlighted in blue within the I-PLEDGE website. This does not mean that these retailers sell only vapor/alternative nicotine products but there is a high likelihood that this is the case. It is recommended that the officer find out what products these retailers sell prior to conducting compliance checks. This way the officer can ensure the underage purchaser is instructed to attempt to purchase a product the retailer carries. Payment cannot be made and the department will be asked to repeat the compliance check if the underage purchaser asks for a product not carried by the retailer.



Where can I learn more about vapor products sold by lowa retailers?

Two training videos were created to educate law enforcement officers and underage purchasers in conducting compliance checks at vape shops and requesting vapor products at any retail establishment that sells vapor products. In order to gain access to these training videos, email iapledge@iowaabd.com for a link to be sent to you.

It is important to note, these videos are for training purposes only and should not be shared with others outside of the compliance check inspection team. This includes not sharing these videos on social media or posting the videos on a platform the public has access to.

X. ABD Contact Information FY 2021



If you have a question or need assistance with the Tobacco Enforcement Program, contact ABD using the contact information below.

Jessica Ekman Tobacco Program Coordinator 515.281.7434 ekman@iowaabd.com

Nicholas Gregory Investigator / Backup Tobacco Program Coordinator 515.401.5421 gregory@iowaabd.com

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